

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DENNIS SIMS,)	
)	
Petitioner,)	
)	
v.)	No. 4:10-CV-1400-TCM
)	
CITY OF ST. LOUIS,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the application of Dennis Sims for leave to commence this action without payment of the required filing fee. Upon consideration of the financial information provided with the application, the Court finds that petitioner is financially unable to pay any portion of the filing fee.

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2554. Having reviewed the petition, the Court will order petitioner to show cause as to why the Court should not dismiss the instant petition for failure to exhaust available state remedies.

The petition and supplement

Petitioner, an inmate at the St. Louis City Justice Center, seeks release from confinement pursuant to 28 U.S.C. § 2254. Petitioner states that, after entering a plea of not guilty, he was convicted in the St. Louis City Circuit Court of two counts of assault, one count of resisting arrest, one count of third

degree domestic assault, and one count of endangering the welfare of a child in the second degree. He was sentenced on October 9, 2009. Petitioner states that he filed an appeal with the Missouri Court of Appeals for the Eastern District and that said appeal is pending.

In the absence of exceptional circumstances, a state prisoner must exhaust currently available and adequate state remedies before invoking federal habeas corpus jurisdiction. Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484 (1973). State remedies are ordinarily not considered exhausted if an individual may effectively present his claim to the state courts by any currently available and adequate procedure. Petitioner he is presently pursuing his direct appeal in the Missouri Court of Appeals; he has available state procedures that he must exhaust before filing a habeas corpus petition in federal court.

Therefore,

IT IS HEREBY ORDERED that petitioner's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that no order to show cause shall issue at this time as to respondent, because it appears that petitioner has not yet exhausted his available state remedies.

IT IS FURTHER ORDERED that petitioner shall show cause within thirty (30) days of the date of this Order as to why the Court should not dismiss the instant application for failure to

exhaust available state remedies. Petitioner's failure to file a show cause response shall result in the denial of the instant habeas corpus petition and the dismissal of this action, without prejudice.

Dated this 16th day of August, 2010.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE